Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Parties Asked to Refresh the Record	)	
Regarding Reconsideration of Rules	)	DA 01-1647
Adopted in the 1997 Universal	)	
Service First Report and Order	)	

COMMENTS
OF THE
RURAL TELEPHONE COALITION

The Rural Telephone Coalition ("RTC")[1] submits these comments in response to the Common Carrier Bureau's invitation to update the record pertaining to petitions for reconsideration filed with respect to the rules the Commission adopted in the First Report and Order in CC Docket No. 96-45, Federal-State Joint Board on Universal Service.[2]

On July 17, 1997, the RTC petitioned the Commission to reconsider and clarify portions of its Universal Service First Report and Order.[3] While many of the issues raised by the RTC have been resolved by subsequent events, a few remain.

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[1] The RTC is comprised of the National Rural Telecom Association ("NRTA"), the National Telephone Cooperative Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"). Together, the three associations represent more than 850 small and rural telephone companies.

[2] *Parties Asked to Refresh the Record Regarding Reconsideration of Rules Adopted in the 1997 Universal Service First Report and Order*, Public Notice, CC Docket No. 96-45, DA 01-1647 (rel. July 11, 2001).

[3] See, Petition for Reconsideration and Clarification of the Rural Telephone Coalition, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed July 17, 1997).

The RTC still seeks reconsideration of 47 C.F.R. § 54.305. This rule limits the support of the buyer of an exchange to that of the seller, the so-called "parent trap" rule. Another point that remains unresolved is the amount of support competitive eligible telecommunications carriers receive. The Commission's rules permit competitive carriers to collect inappropriate and excessive support. The RTC also requested reconsideration of the Commission's decision to use a forward-looking economic cost methodology. While the Commission adopted a five-year modified embedded cost plan, it is possible that the forward-looking methodology will be adopted at the expiration of the five-year plan. Finally, the RTC continues to voice its opposition to the cap on the growth of the universal service fund to support high cost loops. While the Commission modified the cap, the overall cap is still in effect and open to reconsideration.

I. "PARENT TRAP" RULE

Part II of RTC's Petition for Reconsideration sought reconsideration of 47 C.F.R. § 54.305, the so called "parent trap" rule which limits the support of the buyer to that of the seller. The rule is still in effect and the RTC continues to seek reconsideration of the rule. In its Fourteenth Report & Order in this proceeding [4] the Commission amended but did not eliminate the "parent trap" rule. The amended rule retains the parent trap rule but provides additional "safety valve" support for acquired exchanges. Safety valve support has an overall cap, which limits support for all eligible carriers to no more than five percent of the total support available in a given year. An individual carrier receives

[4] *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, (rel. May 3, 2001), paras. 144-147 (RTF Order).

"parent trap" support in the first year after an acquisition and no more than 50% of additional "safety valve" support for acquired lines after the first year.[5]

The reasons for eliminating the "parent trap" rule are as legitimate now as they were when the RTC petition was filed in 1997. At that time, the Commission stated that the rule was needed to discourage carriers from placing unreasonable reliance upon potential universal service support until it applied forward-looking economic costs to calculate support for all carriers. The Commission did not explain what it meant by unreasonable reliance or explain how it arrived at its conclusion. It also did not explain how it could justify a rule which ignores the need to improve service in rural exchanges that have not been upgraded because of limited support available to larger carriers that have received support based on averaged costs. Continued application of the rule leaves some rural consumers behind by reducing the amount of support available to provide the federally supported services to them.

II. SUPPORT RECEIVED BY COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIERS

Part III of the RTC's Petition for Reconsideration sought to address the problems that would develop if competitive eligible telecommunications carriers (CETCs) were to receive windfalls of universal service support that exceed their costs of providing service.[6] Such windfalls would encourage carriers to provide service in rural areas based, not upon market forces, but merely in order to take advantage of regulatory arbitrage opportunities. The receipt of unwarranted support by CETCs is not only detrimental to

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[5] NTCA has filed a separate petition for reconsideration of the safety valve rule. See July 17,2001 Petition for Reconsideration of the National Telephone Cooperative Association in this docket.
[6] Petition of the Rural Telephone Coalition, pp. 8-9.

the subscribers of rural ILECs, but also unnecessarily increases the universal service burdens on all subscribers nationwide, who are the ultimate contributors to the fund.

The primary focus of the RTC, at the time the petition was filed, was centered on the need to provide a mechanism to allow for the disaggregation of high-cost universal service support below the study area level. The Commission has subsequently addressed this aspect of excessive support for new entrants. The Rural Task Force (RTF) Order correctly determined that disaggregation is, as the RTF and others have asserted, appropriate and desirable.[7] However, the adoption of a disaggregation plan does not entirely eliminate the prospect of CETCs collecting inappropriate and excessive support.

In the RTF Order, the Commission astutely rejected the RTF's recommendation to freeze ILEC support upon the entry of a CETC in order to prevent excessive fund growth. The Commission found, in part, that this recommendation may have the unintended consequence of deterring investment in rural infrastructure.[8] Instead, the Commission properly issued a Further Notice of Proposed Rulemaking (FNPRM) along with the RTF Order, seeking comment on alternative measures to prevent excessive fund growth as a result of CETC entry into rural study areas.[9]

The members of the RTC filed comments in response to this FNPRM, recommending that the Commission deal directly with the true source of the problem: the unlawful use of ILEC's per-line costs to calculate the support payable to CETCs with different costs and characteristics.[10] RTC members reasoned that by ensuring that a

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[7]RTF Order, paras. 144-147.
[8] *Id.*, paras. 123-131.
[9] *Id.,* paras. 207-211.
[10] *See,* Comments of NRTA and OPASTCO, *In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45,

CETC's support does not exceed its own costs, the Commission would minimize the faulty market incentives of the current portability rules, while also eliminating the excessive ratepayer burden that Section 254(e) of the 1996 Act was intended to prevent.[11] These comments are currently under consideration by the Commission.

The RTC remains concerned, as expressed in Part III of its 1997 petition, that CETCs may continue to receive high-cost support amounts that encourage uneconomic entry decisions and creamskimming. However, the Commission has correctly addressed one crucial aspect of this problem, through the adoption of a disaggregation plan, while also issuing an FNPRM that, if properly decided, can avert much of the potential threat posed to rural consumers.

III. FORWARD LOOKING ECONOMIC COST METHODOLOGY

Part IV of the RTC's petition for reconsideration of the Commission's 1997 Report and Order challenged the Commission's decision to use a forward-looking economic cost (FLEC) methodology. The RTC continues to believe that the Commission should not adopt a FLEC or TELRIC methodology for rural carriers. There is no record to support such a decision now, and the RTC is convinced that the variability among rural carriers will make it impossible to invent rural inputs that will make a proxy model reliable for rural carriers. However, the holding at issue in the RTC's petition for reconsideration is no longer in effect. In the Commission's decision to adopt the Rural Task Force and Joint Board recommendations (with some modifications) as a five-year

and Report and Order in CC Docket No. 00-256, FCC 01-157, (filed July 30, 2001*). See also,* Comments of NTCA, in the same FNPRM, (filed July 30, 2001).

[11] Section 254(e) states that a carrier that receives support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. To the extent that a CETC receives support based on different, higher ILEC costs, then the CETC is receiving funds that exceed its own universal service costs, in violation of Section 254(e).

plan for rural carriers, the Commission adopted the proposed modified embedded cost plan. It stated (para. 31) that

> the modified embedded cost mechanism we adopt will provide rural carriers with specific, predictable, and sufficient support over the next five years, consistent with the goals and principles set forth in section 254 of the Act. As a result, rural carriers will be able to continue to provide affordable service in rural America.

Although the Commission decided to open a further proceeding to adopt a universal service support mechanism for rural carriers to follow the five-year period, it left open what methodology it would choose at that time. The Commission explained (para. 171) that

> In developing a long-term universal service plan that better targets support to the highest cost rural areas, we intend to consider all options, including the use of forward-looking costs, to determine appropriate support levels for both rural and non-rural carriers.

Since the Commission plans to consider "all options" for rural carriers, not only forward-looking costs, it is clear that the decision in the initial universal service decision for which the RTC requested reconsideration is no longer in effect. Moreover, the RTC will have a chance to participate in the Commission's further proceedings before any FLEC plan could be adopted to follow the five-year RTF plan. Accordingly, there is no longer a decision to apply FLEC to rural carriers to be reconsidered at this time.

IV. CAP ON THE UNIVERSAL SERVICE FUND

Part VI of the RTC Petition for Reconsideration sought reconsideration of the cap on the growth of the fund to support high cost loops. Although the Commission modified the cap in the Fourteenth Report and Order by imposing an index on the cap, the overall cap is still in effect and open to reconsideration. The RTC continues to contend that it is bad policy to impose a cap to control the growth of the fund.

At least one party is seeking reconsideration of the indexed cap. [12] The Commission will no doubt address this issue when it rules on the petitions for reconsideration of the Fourteenth Report and Order and when it defines "sufficiency" and "comparability" in connection with the remand in *Qwest v. FCC*. [13]

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[12] See Petition for Reconsideration of Illinois Commerce Commission filed in this docket on July 17,2001.
[13] *Qwest v. Federal Communications Commission,* __ F.3d _, WL 864222, 10th Cir. (July 31, 2001).

V. CONCLUSION

While the Commission has resolved many of the issues addressed in the RTC petition for reconsideration of the Universal Service First Report and Order, a few remain. It is imperative that the Commission decide these issues and put to rest much of the uncertainty that has plagued the industry for too long.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, DA 01-1647, was served on this 20th day of August 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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